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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL INSURANCE COMPANY,

Plaintiff,

– against –

THE ESTATE OF IRVING GOULD, MEHDI ALI, ALEXANDER M. HAIG, JR., THE ESTATE OF RALPH SELIGMAN, BURTON WINBERG AND J. EDWARD GOFF,

Defendants.

THE ESTATE OF IRVING GOULD, MEHDI ALI, ALEXANDER M. HAIG, JR., THE ESTATE OF RALPH SELIGMAN, BURTON WINBERG AND J. EDWARD GOFF,

Third-Party Plaintiffs,

– against –

CHARTIS INSURANCE COMPANY OF CANADA (f/k/a American Home Assurance Company (Canada Branch)) and TRAVELERS CASUALTY AND SURETY COMPANY (f/k/a the Aetna Casualty and Surety Company),

Third-Party Defendants.

No. 10 Civ. 1160 (RJS)

FEDERAL INSURANCE COMPANY'S RESPONSE
TO DEFENDANTS' STATEMENT OF UNDISPUTED FACTS

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Pursuant to Local Civil Rule 56.1, Federal Insurance Company ("Federal"), submits this response to the Statement of Undisputed Facts of The Estate of Irving Gould, Mehdi Ali, The Estate of Alexander M. Haig, Jr., The Estate of Ralph Seligman, Burton Winberg and J. Edward Goff (collectively, "Defendants"). Where Federal responds to a statement without disputing it, Federal intends to concede only that it does not dispute the asserted facts for purposes of Defendants' motion for partial summary judgment. Federal expressly reserves its right to object to the authenticity, admissibility and relevance of any evidence cited in support of the facts that are not, for present purposes, disputed. Federal specifically reserves its rights to object on any and all grounds and to come forth with alternative evidence to refute these statements at a later date, including trial. Federal also reserves its right to amend its responses given below.

1. This statement is not disputed for the purposes of Defendants' motion.

2. This statement is not disputed for the purposes of Defendants' motion.

3. This statement is not disputed for the purposes of Defendants' motion.

4. This statement is not disputed for the purposes of Defendants' motion.

5. Federal disputes this statement to the extent that it suggests that Defendants have personally paid approximately $14 million in legal costs and other litigations, and states further that of the approximately $14 million "incurred" by Defendants, $10 million was paid by American Home Insurance Company ("American Home") pursuant to its Directors and Officers Liability and Reimbursement Policy number 970-4185 (the "Primary Policy"), and approximately $4 million was paid by Federal under an interim funding agreement (the "IFA") under the terms of which Federal agreed to advance Defense Costs (as defined by the Federal Excess Policies), pursuant to a full reservation of its rights under the Federal Excess Policies.

Although the IFA was initially subject to Federal's reservation of all of its rights under the Federal Excess Policies and at law, including the right to seek reimbursement from Defendants of any amount advanced thereunder, Federal subsequently agreed in 2006 that it would not seek reimbursement from Defendants of amounts advanced under the IFA. (See Declaration of Rachel V. Stevens, dated December 15, 2010 ("Stevens Decl."), Ex. 1, ¶¶ 48-51; Declaration of Laila Brabander, dated January 26, 2011 ("Brabander Decl."), ¶¶ 5, 6.)

6. Federal disputes this statement. Defendants have alleged only that trial "has yet to be scheduled but will commence in 2011 on a date to be set by the court" and settlement negotiations have not begun. (See Declaration of Boji Wong, dated December 15, 2010, ¶ 6.)

7. This statement is not disputed for the purposes of Defendants' motion.

8. Federal disputes this statement to the extent it suggests the existence of coverage other than as expressly limited by the terms of the Federal Excess Policies. (See Stevens Decl., Ex. 2, at Exs. B, C.)

9. This statement is not disputed for the purposes of Defendants' motion, however Federal has reserved, and continues to reserve all rights with respect to whether the Federal Excess Policies provide coverage for the allegations asserted in the Bahamas Litigation.

10. This statement is not disputed for the purposes of Defendants' motion.

11. Federal respectfully refers the Court to the Primary Policy for a true and accurate statement of its contents. (See Stevens Decl., Ex. 2, at Ex. A.)

12. Federal respectfully refers the Court to the Primary Policy for a true and accurate statement of its contents. (See Stevens Decl., Ex. 2, at Ex. A.)

13. Federal respectfully refers the Court to the Primary Policy for a true and accurate statement of its contents. (See Stevens Decl., Ex. 2, at Ex. A.)

14. This statement is not disputed for the purposes of Defendants' motion.

15. This statement is not disputed for the purposes of Defendants' motion, but Federal further states that Federal issued to Commodore Excess Directors and Officers Liability and Reimbursement Policy number 8141-5813 for the policy period November 8, 1993 to November 8, 1994, which was subsequently extended by Endorsement to November 8, 1997 (the "Second Excess Policy"). The Second Excess Policy has a limit of $5 million, excess of $15 million in Underlying Insurance (as defined by the Second Excess Policy). Federal issued to Commodore Excess Directors and Officers Liability and Reimbursement Policy number 8141-5814 for the policy period November 8, 1993 to November 8, 1994, which was subsequently extended by Endorsement to November 8, 1997 (the "Fifth Excess Policy" and, together with the Second Excess Policy, the "Federal Excess Policies"). The Fifth Excess Policy issued by Federal has a limit of $5 million, excess of $30 million in Underlying Insurance (as defined by the Fifth Excess Policy). (See Stevens Decl., Ex. 2, at Exs. B, C.)

16. Federal respectfully refers the Court to the Federal Excess Policies for a true and accurate statement of their contents. (See Stevens Decl., Ex. 2, at Exs. B, C.)

17. Federal respectfully refers the Court to the Federal Excess Policies for a true and accurate statement of their contents. (See Stevens Decl., Ex. 2, at Exs. B, C.)

18. Federal disputes this statement. Travelers issued to Commodore a seventh layer $10 million Directors and Officers Liability and Reimbursement Excess Policy number 095 LB 095 000 440 BCA (the "Seventh Excess Policy"), excess of $40 million in underlying insurance, for the policy period April 28, 1994 to November 8, 1997. (See Stevens Decl., Ex. 4, at Ex. 3.)

19. Federal respectfully refers the Court to the Seventh Excess Policy for a true and accurate statement of its contents. (See Stevens Decl., Ex. 4, at Ex. 3.)

20. Federal respectfully refers the Court to the Seventh Excess Policy for a true and accurate statement of its contents. (See Stevens Decl., Ex. 4, at Ex. 3.)

21. This statement is not disputed for the purposes of Defendants' motion, but Federal further states that Chartis sold an insurance policy to Commodore, Policy Number 970-4712 (the "Chartis Policy"), with a limit of liability of $1 million excess of $50 million, for the policy period November 8, 1993 to November 8, 1994, which was subsequently extended by Endorsement to November 8, 1997. (See Stevens Decl., Ex. 4, at Ex. 2.)

22. Federal respectfully refers the Court to the Chartis Policy for a true and accurate statement of its contents. (See Stevens Decl., Ex. 4, at Ex. 2.)

23. Federal respectfully refers the Court to the Chartis Policy for a true and accurate statement of its contents. (See Stevens Decl., Ex. 4, at Ex. 2.)

24. This statement is not disputed for the purposes of Defendants' motion, but Federal further states that Reliance Insurance Company ("Reliance") issued to Commodore a first layer $5 million Excess Financial Products Insurance Policy number NDA 1498322-91, excess of $10 million in underlying insurance, for the policy period November 8, 1993 to November 8, 1994. The Home Insurance Company of Indiana ("The Home") issued to Commodore a third layer $5 million Directors and Officers Liability Company Reimbursement Policy number ZDO-F 983337-3/000, excess of $20 million in underlying insurance, for the policy period November 8, 1993 to November 8, 1994. Reliance issued to Commodore a fourth layer $5 million Excess Financial Products Policy number NDA 01111997-93, excess of $25 million in underlying insurance, for the policy period November 8, 1993 to November 8, 1994. The Home issued to Commodore a sixth layer $5 million Directors and Officers Liability Company Reimbursement Policy number XDO-F-983338-3/000, excess of $35 million in underlying insurance, for the

policy period November 8, 1993 to November 8, 1994. (See Stevens Decl., Ex. 1, ¶¶ 28, 30, 31, 33.)

25. This statement is not disputed for the purposes of Defendants' motion.

Dated: New York, New York
January 26, 2011

DLA PIPER LLP (US)

By: ______________________

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